

AMENDED IN SENATE JUNE 6, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1736

Introduced by Assembly Member Smyth

February 16, 2012

An act to amend Sections 54954.5 and 54957 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1736, as amended, Smyth. Local government: open meetings.

The Ralph M. Brown Act requires each legislative body of a local agency to provide the time and place for holding regular meetings and requires that all meetings of a legislative body be open and public. Under the act, all persons are permitted to attend any meeting of the legislative body of a local agency, unless a closed session is authorized. Under the act, the legislative body of a local agency is authorized to hold closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, as specified, or a threat to the public's right of access to public services or public facilities.

This bill would authorize the legislative body of a local agency to hold these closed sessions with the Governor *and any necessary staff designated by the Governor*. The bill would make a conforming change to a related provision.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.5 of the Government Code is
2 amended to read:
3 54954.5. For purposes of describing closed session items
4 pursuant to Section 54954.2, the agenda may describe closed
5 sessions as provided below. A legislative body or elected official
6 shall not be in violation of Section 54954.2 or 54956 if the closed
7 session items were described in substantial compliance with this
8 section. Substantial compliance is satisfied by including the
9 information provided below, irrespective of its format.
10 (a) With respect to a closed session held pursuant to Section
11 54956.7:
12 LICENSE/PERMIT DETERMINATION
13 Applicant(s): (Specify number of applicants)
14 (b) With respect to every item of business to be discussed in
15 closed session pursuant to Section 54956.8:
16 CONFERENCE WITH REAL PROPERTY NEGOTIATORS
17 Property: (Specify street address, or if no street address, the
18 parcel number or other unique reference, of the real property under
19 negotiation)
20 Agency negotiator: (Specify names of negotiators attending the
21 closed session) (If circumstances necessitate the absence of a
22 specified negotiator, an agent or designee may participate in place
23 of the absent negotiator so long as the name of the agent or
24 designee is announced at an open session held prior to the closed
25 session.)
26 Negotiating parties: (Specify name of party (not agent))
27 Under negotiation: (Specify whether instruction to negotiator
28 will concern price, terms of payment, or both)

1 (c) With respect to every item of business to be discussed in
2 closed session pursuant to Section 54956.9:

3 CONFERENCE WITH LEGAL COUNSEL—EXISTING
4 LITIGATION

5 (Subdivision (a) of Section 54956.9)

6 Name of case: (Specify by reference to claimant's name, names
7 of parties, case or claim numbers)

8 or

9 Case name unspecified: (Specify whether disclosure would
10 jeopardize service of process or existing settlement negotiations)

11 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED
12 LITIGATION

13 Significant exposure to litigation pursuant to subdivision (b) of
14 Section 54956.9: (Specify number of potential cases)

15 (In addition to the information noticed above, the agency may
16 be required to provide additional information on the agenda or in
17 an oral statement prior to the closed session pursuant to
18 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision
19 (b) of Section 54956.9.)

20 Initiation of litigation pursuant to subdivision (c) of Section
21 54956.9: (Specify number of potential cases)

22 (d) With respect to every item of business to be discussed in
23 closed session pursuant to Section 54956.95:

24 LIABILITY CLAIMS

25 Claimant: (Specify name unless unspecified pursuant to Section
26 54961)

27 Agency claimed against: (Specify name)

28 (e) With respect to every item of business to be discussed in
29 closed session pursuant to Section 54957:

30 THREAT TO PUBLIC SERVICES OR FACILITIES

31 Consultation with: (Specify name of executive or law
32 enforcement agency and title of officer, or name of applicable
33 agency representative and title)

34 PUBLIC EMPLOYEE APPOINTMENT

35 Title: (Specify description of position to be filled)

36 PUBLIC EMPLOYMENT

37 Title: (Specify description of position to be filled)

38 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

39 Title: (Specify position title of employee being reviewed)

40 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY
(Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY BUREAU OF STATE AUDITS

SEC. 2. Section 54957 of the Government Code is amended to read:

54957. (a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions ~~with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.~~ *on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including, but not limited to, water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities, with any of the following:*

(1) *The Governor, and any necessary staff designated by the Governor.*

(2) *The Attorney General, or his or her deputies.*

(3) *A district attorney, or his or her deputies.*

(4) *An agency counsel, or his or her deputies.*

(5) *A sheriff, or his or her deputies.*

1 (6) *A chief of police, or his or her deputies.*

2 (7) *A security consultant.*

3 (8) *A security operations manager.*

4 (b) (1) Subject to paragraph (2), this chapter shall not be
5 construed to prevent the legislative body of a local agency from
6 holding closed sessions during a regular or special meeting to
7 consider the appointment, employment, evaluation of performance,
8 discipline, or dismissal of a public employee or to hear complaints
9 or charges brought against the employee by another person or
10 employee unless the employee requests a public session.

11 (2) As a condition to holding a closed session on specific
12 complaints or charges brought against an employee by another
13 person or employee, the employee shall be given written notice of
14 his or her right to have the complaints or charges heard in an open
15 session rather than a closed session, which notice shall be delivered
16 to the employee personally or by mail at least 24 hours before the
17 time for holding the session. If notice is not given, any disciplinary
18 or other action taken by the legislative body against the employee
19 based on the specific complaints or charges in the closed session
20 shall be null and void.

21 (3) The legislative body also may exclude from the public or
22 closed meeting, during the examination of a witness, any or all
23 other witnesses in the matter being investigated by the legislative
24 body.

25 (4) For the purposes of this subdivision, the term “employee”
26 shall include an officer or an independent contractor who functions
27 as an officer or an employee but shall not include any elected
28 official, member of a legislative body, or other independent
29 contractors. This subdivision shall not limit local officials’ ability
30 to hold closed session meetings pursuant to Sections 1461, 32106,
31 and 32155 of the Health and Safety Code or Sections 37606 and
32 37624.3 of the Government Code. Closed sessions held pursuant
33 to this subdivision shall not include discussion or action on
34 proposed compensation except for a reduction of compensation
35 that results from the imposition of discipline.

36 SEC. 3. The Legislature finds and declares that Section 2 of
37 this act, which amends Section 54957 of the Government Code,
38 imposes a limitation on the public’s right of access to the meetings
39 of public bodies or the writings of public officials and agencies
40 within the meaning of Section 3 of Article I of the California

1 Constitution. Pursuant to that constitutional provision, the
2 Legislature makes the following findings to demonstrate the interest
3 protected by this limitation and the need for protecting that interest:
4 Without some freedom to protect sensitive information, security
5 is compromised. Therefore, the health and safety of the people of
6 California ~~is~~ *are* enhanced by giving governing bodies the authority
7 to meet with the Governor in closed meetings to discuss security
8 matters that may include sensitive information.

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